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*Attorneys for Plaintiff LADARRIUS COOLEY and
all others similarly situated*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LADARRIUS COOLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

DENNY'S CORPORATION, a Delaware
company,

Defendant.

Case No.: 2:20-cv-00255

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff LaDarrius Cooley brings this class action under the Telephone Consumer
Protection Act against Defendant Denny's Corporation to stop its practice of sending
unauthorized text messages promoting its restaurants, and to obtain redress for all

^{1A,B} Messrs. Kaufman, Ahdoot and King will comply with LR IA 11-2 and move for
pro hac vice admission within 45 days.

1 persons similarly injured by its conduct. Plaintiff alleges as follows upon personal
2 knowledge as to himself and his own acts and experiences, and, as to all other matters,
3 upon information and belief, including investigation conducted by his attorneys.

4 **NATURE OF THE ACTION**

5 1. This case challenges Defendant's practice of sending unauthorized text
6 messages to consumers promoting its restaurants.

7 2. Defendant's text messages violated the Telephone Consumer Protection
8 Act, 47 U.S.C. § 227, and caused Plaintiff and putative members of the Class to suffer
9 actual harm, including the aggravation, nuisance, loss of time, and invasions of privacy
10 that result from the receipt of such calls, lost value of cellular services paid for, and a
11 loss of the use and enjoyment of their phones, including wear and tear to their phones'
12 data, memory, software, hardware, and battery components, among other harms.

13 3. Accordingly, Plaintiff seeks an injunction requiring Defendant to cease
14 sending unsolicited text messages to consumers, as well as an award of actual and/or
15 statutory damages and costs.

16 **PARTIES**

17 4. Plaintiff Cooley is, and at all times relevant to the allegations in the
18 complaint was, a Las Vegas, Nevada resident. Plaintiff received Denny's unauthorized
19 text messages while physically located in Las Vegas.

20 5. Defendant Denny's Corporation is a Delaware company headquartered in
21 South Carolina.

22 **JURISDICTION & VENUE**

23 6. This Court has federal question subject matter jurisdiction over this action
24 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
25 Protection Act, 47 U.S.C. § 227 ("TCPA").

26 7. The Court has personal jurisdiction over Defendant and venue is proper in
27 this District because Defendant's unauthorized telemarketing scheme was directed by
28 Defendant to Plaintiff in this District as part of a nationwide text messaging campaign

regularly involving text messages to other consumers in this District.

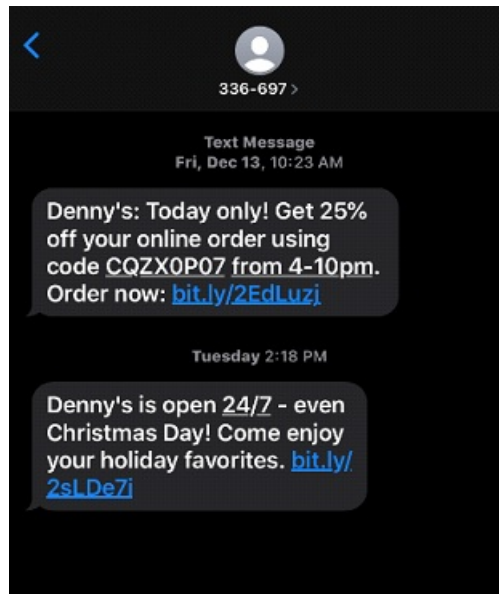
FACTUAL ALLEGATIONS

8. Defendant is a company that owns, operates, and/or franchises Denny's branded restaurants nationwide.

9. To increase sales at Denny's restaurants, and as part of a general marketing scheme, Defendant markets Denny's restaurants using text messages to consumers.

10. This case arises from Defendant's unsolicited text messages to Plaintiff and other consumers.

11. On December 13, 2019 and December 17, 2019, Defendant text messaged Plaintiff from short code 336-697, without Plaintiff's consent:



12. Plaintiff has never provided his consent to Denny's to send him text messages to his cellular phone number using an automatic telephone dialing system.

13. Defendant's unsolicited texts were a nuisance that aggravated Plaintiff, wasted his time, invaded his privacy, diminished the value of the cellular services he paid for, caused him to temporarily lose the use and enjoyment of his phone, and caused wear and tear to his phone's data, memory, software, hardware, and battery components.

1 14. In sending the unsolicited text messages at issue, Denny's, or a third party
2 acting on its behalf, utilized an automatic telephone dialing system; hardware and/or
3 software with the capacity to store or produce cellular telephone number to be called,
4 using a random or sequential number generator, or to dial telephone numbers from
5 preloaded lists. This is evident from the circumstances surrounding the text messages,
6 including the text messages' commercial and generic content, that the text messages
7 were unsolicited, and that they were sent from a short code, which is consistent with the
8 use of an automatic telephone dialing system to send text messages.

9 15. On information and belief, Denny's, or a third-party acting on its behalf,
10 sent substantively identical unsolicited text messages en masse to the cellular telephone
11 numbers of thousands of consumers. This is evident from the text messages'
12 commercial and generic content, that the text messages were unsolicited, and that they
13 were using an automatic telephone dialing system.

14 16. To the extent the text messages were sent on Defendant's behalf to
15 consumers, Defendant provided the third-party access to its records, authorized use of
16 its trade name and devoted short code, otherwise controlled the content of the messages,
17 and knew of, but failed to stop, the sending of the text messages in violation of the
18 TCPA.

19 17. Accordingly, Plaintiff brings this action pursuant to Federal Rules of Civil
20 Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all others similarly situated
21 and seeks certification of the following Class:

22 **ATDS Class:** All persons who, on or after four years prior to the filing of
23 the initial complaint in this action through the date of class certification,
24 (1) were sent a text message to their cellular telephone number by or on
25 behalf of Denny's, (2) using a dialing system substantially similar dialing
26 system as used to text message Plaintiff, (3) for a substantially similar
27 reason as Defendant texted Plaintiff.

28 18. The following individuals are excluded from the Class: (1) any Judge or
Magistrate presiding over this action and members of their families; (2) Defendant, its
subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its

1 parents have a controlling interest and their current or former employees, officers and
2 directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely
3 request for exclusion from the Class; (5) the legal representatives, successors or assigns
4 of any such excluded persons; and (6) persons whose claims against Defendant have
5 been fully and finally adjudicated and/or released. Plaintiff anticipates the need to
6 amend the class definitions following appropriate discovery.

7 19. **Numerosity:** The exact size of the Class is unknown and unavailable to
8 Plaintiff at this time, but it is clear that individual joinder is impracticable. On
9 information and belief, Defendant sent unsolicited text messages to thousands of
10 individuals who fall into the Class definition. Class membership can be easily
11 determined from Defendant's records.

12 20. **Typicality:** Plaintiff's claims are typical of the claims of the other
13 members of the Class. Plaintiff is a member of the Class, and if Defendant violated the
14 TCPA with respect to Plaintiff, then it violated the TCPA with respect to the other
15 members of the Class. Plaintiff and the Class sustained the same damages as a result of
16 Defendant's uniform wrongful conduct.

17 21. **Commonality and Predominance:** There are many questions of law
18 and fact common to the claims of Plaintiff and the Class, and those questions
19 predominate over any questions that may affect individual members of the Class.
20 Common questions for the Class include, but are not necessarily limited to the
21 following:

- 22 a) How Defendant gathered, compiled, or obtained the telephone numbers of
23 Plaintiff and the Class;
- 24 b) Whether the text messages were sent using an automatic telephone dialing
25 system;
- 26 c) Whether Defendant's text messages were sent for the purpose of
27 marketing Defendant's restaurants;
- 28 d) Whether Defendant sent some or all of the text messages without the
 consent of Plaintiff and the Class; and
- e) Whether Defendant's conduct was willful and knowing such that Plaintiff

1 and the Class are entitled to treble damages.

2 22. **Adequate Representation:** Plaintiff will fairly and adequately
3 represent and protect the interests of the Class and has retained counsel competent and
4 experienced in complex class actions. Plaintiff has no interest antagonistic to those of
5 the Class, and Defendant has no defenses unique to Plaintiff.

6 23. **Policies Generally Applicable to the Class:** This class action is
7 appropriate for certification because Defendant has acted or refused to act on grounds
8 generally applicable to the Class as a whole, thereby requiring the Court's imposition of
9 uniform relief to ensure compatible standards of conduct toward the members of the
10 Class, and making final injunctive relief appropriate with respect to the Class as a whole.
11 Defendant's practices challenged herein apply to and affect the members of the Class
12 uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct
13 with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

14 24. **Superiority:** This case is also appropriate for class certification because
15 class proceedings are superior to all other available methods for the fair and efficient
16 adjudication of this controversy given that joinder of all parties is impracticable. The
17 damages suffered by the individual members of the Class will likely be relatively small,
18 especially given the burden and expense of individual prosecution of the complex
19 litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for
20 the individual members of the Class to obtain effective relief from Defendant's
21 misconduct. Even if members of the Class could sustain such individual litigation, it
22 would still not be preferable to a class action, because individual litigation would
23 increase the delay and expense to all parties due to the complex legal and factual
24 controversies presented in this case. By contrast, a class action presents far fewer
25 management difficulties and provides the benefits of single adjudication, economy of
26 scale, and comprehensive supervision by a single court.

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FIRST CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On Behalf of Plaintiff and the ATDS Class)

25. Plaintiff repeats and realleges the allegations of paragraphs 1 through 24 of this complaint and incorporates them by reference.

26. Defendant and/or its agents transmitted text messages to cellular telephone numbers belonging to Plaintiff and the other members of the ATDS Class using an automatic telephone dialing system.

27. These solicitation text messages were sent without the consent of Plaintiff and the other members of the ATDS Class.

28. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii), and as a result, under 47 U.S.C. §§ 227(b)(3)(B)-(C), Plaintiff and members of the ATDS Class are entitled to a minimum of \$500 and a maximum \$1,500 in damages for each violation.

JURY TRIAL DEMAND

29. Plaintiff requests a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cooley, individually and on behalf of the Class, prays for the following relief:

a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and his counsel as Class Counsel;

b) An award of actual and/or statutory damages and costs;

c) An order declaring that Defendant's actions, as set out above, violate the TCPA;

d) An injunction requiring Defendant to cease all unsolicited text messaging activity, and to otherwise protect the interests of the Class; and

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e) Such further and other relief as the Court deems necessary.

Dated: February 4, 2020

Respectfully Submitted,

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